

REMARKS

The above amendments and these remarks are being submitted in response to the Office action dated July 18, 2006, that was issued in connection with the above-identified patent application. Prior to entry of the above amendments, claims 1–10, 13–22, and 34–46 were pending in the application. Claims 13–20, 34, and 40–46 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 1–10, 13, 21–22, and 35–40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,712,594 to Schneider in view of U.S. Patent No. 6,239,210 to Kim et al. Claims 14–20 and 41–45 stand rejected as being unpatentable over Schneider in view of Kim et al., in further view of U.S. Patent No. 5,374,088 to Moretti et al. Claims 34 and 46 stand rejected as being unpatentable over Schneider in view of Kim et al., in further view of U.S. Patent No. 6,279, 772 to Bowman. Applicants traverse all rejections.

By the above amendments, claims 1–2, 4–5, 13, 34–36, 40, and 46 are amended, and new claims 47–48 are added. Applicants submit that no new matter has been introduced, and respectfully request reconsideration of the application under 37 C.F.R. § 1.111 and allowance of the pending claims.

Rejections under 35 U.S.C. § 112

As mentioned, claims 13–20, 34 and 40–46 stand rejected under 35 U.S.C. § 112, second paragraph, “as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.” [OA ¶ 2] The Office action states that “[s]ince claims 1 and 35 recite ‘a bite-actuated mouthpiece’

or alternatively a gas mask, it is not clear if the ‘bite-actuated mouthpiece’ of claims 34 and 46 is a double inclusion of the ‘bite-actuated mouthpiece’ of claims 1 and 35.” [OA ¶ 2] Applicants presently amend claims 34 and 46 to recite “the bite-actuated mouthpiece.”

The Office action fails to identify specific Section 112 rejections for claims 13–20 and 40–45. Applicants assume the Examiner rejected these claims because claims 13 and 40 recite both the bite-actuated mouthpiece *and* the fitting adapted to interconnect the drink tube with a gas mask, while the bite-actuated mouthpiece and the fitting were introduced as alternatives in claims 1 and 35, respectively. Applicants respectfully traverse these rejections. Though introduced in the alternative, claims 13 and 40, prior to the present amendments, introduce “a quick-connect assembly adapted to selectively and interchangeably couple the distal end of the elongate drink tube in fluid communication with the bite-actuated mouthpiece and the fitting [adapted to interconnect the drink tube with a gas mask].” In other words, the quick connect assembly is adapted to couple the elongate drink tube with *either* the bite-actuated bite valve *or* the fitting adapted to interconnect the drink tube with a gas mask, whichever may be incorporated into a personal hydration system according to claims 1 and 35.

Applicants believe that claims 13 and 40, prior to the present amendments, are not indefinite; however, Applicants presently amend claims 13 and 40—for clarification purposes only—to recite that the quick-connect assembly may couple the elongate drink tube with “either the bite-actuated mouthpiece or the fitting adapted to interconnect the drink tube with a gas mask.”

If Applicants are incorrect in their interpretation of the rejection of claims 13–20 and 40–45, Applicants expressly request a telephone interview with the Examiner to clarify the Office action. Applicants’ attorney of record can be reached at the telephone number noted below.

Rejections under 35 U.S.C. § 103

Claims 1–10, 13–22, and 34–46 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,712,594 to Schneider in view of U.S. Patent No. 6,239,210 to Kim et al., either alone or in combination with additional references.

Amended independent claims 1 and 35 are presented below and are directed to personal hydration systems that include a multilayer chemically resistant fluid reservoir that has a downstream assembly extending therefrom and which is formed from multilayer, multilaminate material having a plurality of chemically resistant layers that contain ethylene vinyl alcohol. A first waterproof layer is on a first side of the plurality of chemically resistant layers, and a second waterproof layer is on a second side of the plurality of chemically resistant layers. In other words, there are at least two waterproof layers that surround, or sandwich, the plurality of chemically resistant layers, whether directly surrounding the chemically resistant layers or with additional layers also sandwiched therebetween.

1. (Currently Amended) A personal hydration system, comprising:
a flexible fluid reservoir having a body portion with an internal compartment adapted to receive a volume of drink fluid, wherein the reservoir includes a selectively sealable fill port having an opening through which drink fluid may be added to the compartment and an exit port through which drink fluid may be selectively drawn from the compartment, wherein the reservoir is formed from a multilayered chemically resistant material that includes ~~at least one~~ **a plurality of spaced apart** chemically resistant layers containing ethylene vinyl alcohol and ~~at least one~~ **a first** waterproof layer **on a first side of the plurality of chemically resistant layers and a second waterproof layer on a second side of the plurality of chemically resistant layers,** ~~on each side of the at least one layer comprising ethylene vinyl alcohol,~~ wherein the chemically resistant layers ~~s~~ **are** adapted to be resistant to at least mustard and sarin chemical agents, **and** wherein the material is a multilaminate structure, ~~and further wherein the material is sufficiently clear that drink fluid in the internal compartment may be viewed through the material from external the reservoir;~~ and
an elongate downstream assembly in fluid communication with the exit port and adapted to selectively dispense drink fluid to a user, wherein the downstream assembly comprises an elongate drink tube and at least one of a bite-actuated mouthpiece from which a user may selectively draw drink fluid from the compartment by sucking upon the mouthpiece or a fitting adapted to interconnect the drink tube with a gas mask.

35. (Currently Amended) A personal hydration system, comprising:
a flexible fluid reservoir having a body portion with an internal compartment adapted to receive a volume of drink fluid, wherein the reservoir includes a selectively sealable fill port having an opening through which drink fluid may be added to the compartment and an exit port through which drink fluid may be selectively drawn from the compartment, wherein the reservoir is formed from a multilayered, multilaminate chemically resistant material that includes ~~at least one~~ **a plurality of** chemically resistant layers containing ethylene vinyl alcohol and ~~at least one~~ **a first** waterproof layer ~~on each side of the at least one layer comprising ethylene vinyl alcohol~~ **on a first side of the plurality chemically resistant layers and a second waterproof layer on a second side of the plurality of chemically resistant layers,** wherein the chemically resistant layers ~~s~~ **isare** adapted to be resistant to at least mustard and sarin chemical agents, and further wherein the reservoir includes a RF-welded perimeter region; and
an elongate downstream assembly in fluid communication with the exit port and adapted to selectively dispense drink fluid to a user, wherein the downstream assembly comprises an elongate drink tube and at least one of a bite-actuated mouthpiece from which a user may selectively draw drink fluid from the compartment by sucking upon the mouthpiece or a fitting adapted to interconnect the drink tube with a gas mask.

As expressed in the Office action, Schneider is cited for providing, in Figs. 1 and 10–13, a flexible fluid reservoir 82, a fill port 83, exit ports 84, and an elongated downstream assembly 65 in fluid communication with the exit ports, etc. However, and as the Examiner correctly recognizes, Schneider is silent about the type of material from which the container is formed, and as such fails to disclose or suggest the multilayer construction recited in amended claims 1 and 35. Kim et al. is cited for “show[ing] a clear reservoir made with a clear gas resistant layer containing ethylene vinyl alcohol layered with a waterproof heat-sealable polyester layer on each side.” [OA ¶ 4]

Kim et al. fails to disclose the multilayered, multilaminate material presently claimed in amended independent claims 1 and 35. Specifically, Kim et al. fails to teach or suggest “a multilayered chemically resistant material that includes a plurality of spaced apart chemically resistant layers containing ethylene vinyl alcohol and a first waterproof layer on a first side of the plurality of chemically resistant layers and a second waterproof layer on a second side of the plurality of chemically resistant layers.” Furthermore, Kim et al. fails to teach or suggest resistance to at least mustard and sarin chemical agents. Rather, Kim et al. teaches only a *single* layer of *oxygen* barrier material, used either by itself or with adjacent structural layers (see Abstract; col. 1, lines 40–47; and Fig. 2, showing only a single oxygen barrier layer 16), which is ineffective to provide chemically resistance to flexible fluid reservoirs such as those claimed in claims 1 and 35. Accordingly, for at least these reasons, the combination of Schneider and Kim et al. fails to teach or suggest each and every limitation of independent claims 1 and 35, and may not be relied on to establish a prima facie case of obviousness.

Finally, it would not be obvious to one of ordinary skill in the art to modify the multi-

layered materials taught by Kim et al. to arrive at the multilayered, multilaminate material presently claimed in independent claims 1 and 35 and including a plurality of chemically resistant layers. The compositions and structures disclosed in Kim et al. are directed to enclosing food and beverage products (e.g., soft drinks, beer, citrus products, tomato-based products, and aseptically packed meat). (See *generally* Background of the Invention, col. 1, line 19–col. 3, line 53) Accordingly, all of the applications contemplated in Kim et al. relate to one-time use packaging (i.e., packaging for food or beverages where the packaging is disposed of after consumption or removal of the contents). The present application—and in particular the claims at issue here—on the other hand, is directed to personal hydration systems for use in harsh environments having potentially deadly gases present, in which the compositions disclosed in Kim et al. would be ineffective to protect against. Furthermore, personal hydration system reservoirs are used repeatedly by users and require a level of durability not present in the compositions disclosed in Kim et al. Personal hydration systems permit a user to fill the reservoir with a desired hydration fluid prior to multiple uses of a system, whereas the compositions disclosed in Kim et al. merely need to withstand a single use. Furthermore, the durability of the reservoir is particularly important when configured for chemical resistance as presently claimed. Accordingly, the compositions disclosed in Kim et al. are ineffective for personal hydration system reservoirs. Applicants can provide a declaration attesting to the above—including the properties of food and beverage containers such as those disclosed in Kim et al.—should the Examiner feel one is necessary.

In summary, the limitations of amended claims 1 and 35 relating to the chemical resistant layers are not disclosed in the prior art of record, and it would not have been obvious to one of ordinary skill in the art to modify the prior art references to arrive at the claimed invention. Thus, for at least these reasons, Applicants respectfully request withdrawal of the rejections under 35 U.S.C. § 103(a) and allowance of the pending claims.

Conclusion

Applicants believe that this application is now in condition for allowance, in view of the above amendments and remarks. Accordingly, Applicants respectfully request that the Examiner issue a Notice of Allowability covering the pending claims. If the Examiner has any questions, or if a telephone interview would in any way advance prosecution of the application, please contact the undersigned attorney of record.

CERTIFICATE OF ELECTRONIC SUBMISSION

I hereby certify that this correspondence is being electronically deposited via the USPTO EFS-WEB system on date January 17, 2007.

/ Stephen R. Pendleton /
Stephen R. Pendleton

Respectfully submitted,

KOLISCH HARTWELL, P.C.

/ David S. D'Ascenso /
David S. D'Ascenso, Reg. No. 39,952
Customer No. 23581
Kolisch Hartwell, P.C.
520 S.W. Yamhill Street, Suite 200
Portland, Oregon 97204
Telephone: (503) 224-6655
Facsimile: (503) 295-6679